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**FILED**  
APR 16 2009  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**ORIGINAL**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

No. 3-09-70315-BZ

v.

JULIO HERNANDEZ,

Defendant.

STIPULATION AND ~~PROPOSED~~  
ORDER DOCUMENTING WAIVER

With the agreement of the parties, and with the consent of the defendant, the Court enters this order vacating the preliminary hearing date of April 17, 2009, setting a new preliminary hearing date on May 8, 2009, at 9:30 a.m., before the duty magistrate judge, extending the time for the preliminary hearing under Federal Rule of Criminal Procedure 5.1, and excluding time under the Speedy Trial Act from the date of this stipulation to May 8, 2009. The parties agree and stipulate, and the Court finds and holds, as follows:

1. The defendant, Julio Hernandez, was charged in a complaint dated April 3, 2009 with one count of conspiracy to commit murder in aid of racketeering, one count of conspiracy to

1 commit assault with a dangerous weapon in aid of racketeering, and one count of using or  
2 possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §§  
3 1959(a)(5) and (a)(6), 924(c), and 2. Hernandez was transferred into federal custody on April 10,  
4 2009, and presented to Magistrate Judge Maria-Elena James on that day. On April 14, 2009,  
5 Hernandez appeared before Magistrate Judge Bernard Zimmerman and Gilbert Eisenberg, Esq.,  
6 was appointed to represent him. The defendant waived his right to seek bail without prejudice to  
7 any future bail applications, and Judge Zimmerman also scheduled a preliminary hearing date for  
8 April 17, 2009. The defendant remains detained pending further proceedings.

9 2. Following the appointment of Mr. Eisenberg, the parties have been conferring  
10 regarding possible dispositions of this matter. These discussions are continuing with the goal of  
11 reaching a disposition prior to the filing of formal charges against the defendant. As a result, the  
12 parties have asked the Court to extend the preliminary hearing date to May 8, 2009, pursuant to  
13 Federal Rule of Criminal Procedure 5.1, and excluding the time under the Speedy Trial Act, 18  
14 U.S.C. § 3161.

15 3. Taking into the account the public interest in the prompt disposition of criminal  
16 cases, the above-stated ground is good cause for extending the time limit for a preliminary  
17 hearing under Federal Rule of Criminal Procedure 5.1, for the filing period for an indictment, and  
18 for excluding time under the Speedy Trial Act. Failure to grant the continuance would deny the  
19 defense time for effective preparation and for seeking disposition of this matter on agreed-upon  
20 terms.

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**10** DATED: April 15, 2009

**13** || DATED: April 15, 2009

DATED: April \_\_\_\_, 2009

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10 DATED: April 15, 2009 /s/  
11 GILBERT EISENBERG, ESQ.  
Attorney for JULIO HERNANDEZ

13 DATED: April 15, 2009 /s/  
14 W.S. WILSON LEUNG  
Assistant United States Attorney

IT IS SO ORDERED.

DATED: April 16, 2009

  
~~HON. BERNARD ZIMMERMAN~~  
United States Magistrate Judge

18 ~~HON. BERNARD ZIMMERMAN~~  
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee of the office of the United States Attorney, Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned certifies that he caused copies of

**STIPULATION AND PROPOSED ORDER DOCUMENTING WAIVER**

in the case of **UNITED STATES v. JULIO HERNANDEZ, 3-09-70315-BZ** to be served on the parties in this action, by placing a true copy thereof in a sealed envelope, addressed as follows which is the last known address:

**Gilbert Eisenberg  
Law Offices of Gilbert Eisenberg  
400 Montgomery Street, #200  
San Francisco, CA 94104**

\_\_\_\_ (By Personal Service), I caused such envelope to be delivered by hand to the person or offices of each addressee(s) above.

X (By Facsimile), I caused each such document to be sent by Facsimile to the person or offices of each addressee(s) above.

X (By Mail), I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Francisco, California.

\_\_\_\_ (By Fed Ex), I caused each such envelope to be delivered by FED EX to the address listed above.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 15, 2009

  
\_\_\_\_\_  
KEVIN COSTELLO  
United States Attorney's Office